

***IN THE UNITED STATES COURT OF FEDERAL CLAIMS***

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In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-09-900012

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**OPINION and MEMORANDUM**

**HEWITT**, Chief Judge

The Court received a Judicial Misconduct Complaint alleging that a judge of this court engaged in judicial misconduct by virtue of his dismissal of a case and not allowing for a rehearing or an amended judgment.<sup>1</sup>

The Judicial Improvement Act, codified at 28 U.S.C. §§ 351-364, and the Rules of Judicial-Conduct and Judicial-Disability Proceedings (RJCP) provide a way for any person to complain about a federal judge who the person believes “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” Under the RJCP 11(a), the Chief Judge reviews complaints of judicial misconduct that are filed with the court and determines whether they should be dismissed or referred for further proceedings. Further, RJCP 11(c) provides that a complaint must be dismissed by the Chief Judge, without further review, if the Chief Judge concludes that the complaint:

- (A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office;
- (B) is directly related to the merits of a decision or procedural ruling;
- (C) is frivolous;
- (D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;
- (E) is based on allegations which are incapable of being established through investigation;
- (F) has been filed in the wrong circuit under Rule 7; or
- (G) is otherwise not appropriate for consideration under the Act.

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<sup>1</sup> Title 28 U.S.C. § 372 and the Rules of Judicial-Conduct and Judicial-Disability Proceedings require the court to issue a public opinion which describes the misconduct alleged and the basis of its decision. RJCP 24(a). However, the identity of the judge and complainant are protected. RJCP 24(a)(1) and 24(a)(5). Accordingly, the court will not identify the parties, nor describe the context in which the complainant’s grievances arose with any degree of specificity.

In addition, the Rules provide guidance as to what constitutes prejudicial conduct. Conduct prejudicial to the effective and expeditious administration of the business of the courts is not a precise term. It includes such things as use of the judge's office to obtain special treatment for friends and relatives, acceptance of bribes, improperly engaging in discussions with lawyers or parties in cases in the absence of representatives of opposing parties, and other abuses of judicial office. RJCP 3(h). It does not include making wrong decisions - even very wrong decisions - in cases.

Review of complainant's charges has not demonstrated that the judge engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. The complainant alleges that the judge in question acted contrary to "accepted standards or established usage of the law," and did not honor a lawful writ of the United States Board of Contract Appeals.

The court finds complainant's allegations are directly related to the merits of the decision-making process and not a basis for a finding of judicial misconduct.

When a complainant believes that a judge did not fairly consider his allegations and/or did not apply the correct law to his claims and dismissed his case on an erroneous basis, he is able to seek relief from the United States Court of Appeals for the Federal Circuit. However, he may not broaden his appellate rights through the judicial misconduct process.

**THEREFORE, IT IS ORDERED**, as follows:

1. The complaint is **DISMISSED** because the alleged facts are found to be directly related to the merits of the decision. RJCP 11(c)(1)(B);
2. The complainant has the right to file a petition for review of this decision by the entire court. The deadline for filing such a petition is thirty-five (35) days from the day of the Clerk's letter transmitting this Order. RJCP 18(b).

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Emily C. Hewitt  
Chief Judge